

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

CRAIG YATES, an individual; and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

Marin County

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Thomas E. Frankovich, APLC
2806 Van Ness Ave., S.F., CA 94109 (415) 674-8600

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

1 U.S. Government Plaintiff

3 Federal Question
(U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF
(For diversity cases only) AND ONE BOX FOR DEFENDANT)

Citizen of This State

PTF

DEF

PTF

DEF

Incorporated or Principal Place
of Business In This State

Citizen of Another State

PTF

DEF

PTF

DEF

Incorporated and Principal Place
of Business In Another State

Citizen or Subject of a
Foreign Country

PTF

DEF

PTF

DEF

Foreign Nation

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

Original
Proceeding

Removed from
State Court

Remanded from
Appellate Court

Reinstated or
Reopened

Transferred from
Another district
(specify)

Multidistrict
Litigation

Appeal to District
Judge from Magistrate
Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|--|---|---|
| <input checked="" type="checkbox"/> 110 Insurance | PERSONAL INJURY | <input checked="" type="checkbox"/> 610 Agriculture | <input checked="" type="checkbox"/> 422 Appeal 28 USC 158 | <input checked="" type="checkbox"/> 400 State Reapportionment |
| <input checked="" type="checkbox"/> 120 Marine | <input checked="" type="checkbox"/> 362 Personal Injury Med Malpractice | <input checked="" type="checkbox"/> 620 Other Food & Drug | <input checked="" type="checkbox"/> 423 Withdrawal 28 USC 157 | <input checked="" type="checkbox"/> 410 Antitrust |
| <input checked="" type="checkbox"/> 130 Miller Act | <input checked="" type="checkbox"/> 365 Personal Injury Product Liability | <input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | PROPERTY RIGHTS | <input checked="" type="checkbox"/> 430 Banks and Banking |
| <input checked="" type="checkbox"/> 140 Negotiable Instrument | <input checked="" type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input checked="" type="checkbox"/> 630 Liquor Laws | <input checked="" type="checkbox"/> 450 Commerce/ICC Rates/etc. | |
| <input checked="" type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | PERSONAL PROPERTY | <input checked="" type="checkbox"/> 640 RR & Truck | <input checked="" type="checkbox"/> 460 Deportation | |
| <input checked="" type="checkbox"/> 151 Medicare Act | <input checked="" type="checkbox"/> 370 Other Fraud | <input checked="" type="checkbox"/> 650 Airline Regs | <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations | |
| <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) | <input checked="" type="checkbox"/> 371 Truth in Lending | <input checked="" type="checkbox"/> 660 Occupational Safety/Health | <input checked="" type="checkbox"/> 480 Consumer Credit | |
| <input checked="" type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input checked="" type="checkbox"/> 380 Other Personal Property Damage | <input checked="" type="checkbox"/> 690 Other | <input checked="" type="checkbox"/> 490 Cable/Satellite TV | |
| <input checked="" type="checkbox"/> 160 Stockholders Suit | <input checked="" type="checkbox"/> 385 Property Damage Product Liability | LABOR | <input checked="" type="checkbox"/> 810 Selective Service | |
| <input checked="" type="checkbox"/> 190 Other Contract | <input checked="" type="checkbox"/> 390 Other Personal Injury | <input checked="" type="checkbox"/> 710 Fair Labor Standards Act | <input checked="" type="checkbox"/> 850 Securities/Commodities/ Exchange | |
| <input checked="" type="checkbox"/> 195 Contract Product Liability | | <input checked="" type="checkbox"/> 720 Labor/Mgmt Relations | <input checked="" type="checkbox"/> 875 Customer Challenge 12 USC 3410 | |
| <input checked="" type="checkbox"/> 196 Franchise | | <input checked="" type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act | <input checked="" type="checkbox"/> 891 Agricultural Acts | |
| REAL PROPERTY | CIVIL RIGHTS | <input checked="" type="checkbox"/> 740 Railway Labor Act | <input checked="" type="checkbox"/> 892 Economic Stabilization Act | |
| <input checked="" type="checkbox"/> 210 Land Condemnation | <input checked="" type="checkbox"/> 441 Voting | <input checked="" type="checkbox"/> 750 Other Labor Litigation | <input checked="" type="checkbox"/> 893 Environmental Matters | |
| <input checked="" type="checkbox"/> 220 Foreclosure | <input checked="" type="checkbox"/> 442 Employment | <input checked="" type="checkbox"/> 791 Empl.Ret. Inc. Security Act | <input checked="" type="checkbox"/> 894 Energy Allocation Act | |
| <input checked="" type="checkbox"/> 230 Rent Lease & Ejectment | <input checked="" type="checkbox"/> 443 Housing | <input checked="" type="checkbox"/> 870 Taxes (US Plaintiff or Defendant | <input checked="" type="checkbox"/> 895 Freedom of Information Act | |
| <input checked="" type="checkbox"/> 240 Torts to Land | <input checked="" type="checkbox"/> 444 Welfare | <input checked="" type="checkbox"/> 871 IRS - Third Party | <input checked="" type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice | |
| <input checked="" type="checkbox"/> 245 Tort Product Liability | <input checked="" type="checkbox"/> 446 Other Civil Rights | <input checked="" type="checkbox"/> 26 USC 7609 | <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes | |
| <input checked="" type="checkbox"/> 290 All Other Real Property | <input checked="" type="checkbox"/> 445 Amer w/ disb - Empl | | <input checked="" type="checkbox"/> 890 Other Statutory Actions | |
| | <input checked="" type="checkbox"/> 446 Amer w/ disb - Other | | | |
| | | | | |

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT
CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

JURY DEMAND: YES NO

VIII. RELATED CASE(S) PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
IF ANY "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND

SAN JOSE

DATE

5/20/08

SIGNATURE OF ATTORNEY OF RECORD

ORIGINAL

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
 2 THOMAS E. FRANKOVICH,
 3 *A Professional Law Corporation*
 4 2806 Van Ness Avenue
 5 San Francisco, CA 94109
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8
 9 Attorneys for Plaintiffs
 10 CRAIG YATES
 11 and DISABILITY RIGHTS
 12 ENFORCEMENT, EDUCATION,
 13 SERVICES: HELPING YOU
 14 HELP OTHERS

EDL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CV 08
CASE NO.
Civil Rights

3004

15 CRAIG YATES, an individual; and)
 16 DISABILITY RIGHTS, ENFORCEMENT,)
 17 EDUCATION, SERVICES:HELPING YOU)
 18 HELP OTHERS, a California public benefit)
 corporation,)
)
 19 Plaintiffs,)
)
 20 v.)
)
 21 FRANKLIN ARDEN LLC, dba)
 22 GRAVENSTEIN BUSINESS CENTER,)
)
 23 Defendant.)

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES:

1st CAUSE OF ACTION: For Denial of Access by a Public Accommodation in Violation of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full and Equal Access in Violation of California Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of Accessible Sanitary Facilities in Violation of California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of Access to Full and Equal Accommodations, Advantages, Facilities, Privileges and/or Services in Violation of California Civil Code §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiffs CRAIG YATES, an individual; and DISABILITY RIGHTS, ENFORCEMENT,
2 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
3 corporation (hereinafter sometimes referred to as "DREES"), complain of defendant FRANKLIN
4 ARDEN LLC, dba GRAVENSTEIN BUSINESS CENTER and allege as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical
7 disabilities, of which class plaintiff CRAIG YATES and the membership of DREES are
8 members, for failure to remove architectural barriers structural in nature at defendants'
9 GRAVENSTEIN BUSINESS CENTER, a place of public accommodation, thereby
10 discriminatorily denying plaintiffs and the class of other similarly situated persons with physical
11 disabilities access to, the full and equal enjoyment of, opportunity to participate in, and benefit
12 from, the goods, facilities, services, and accommodations thereof. Plaintiffs seek injunctive
13 relief and damages pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101,
14 *et seq.*; California Civil Code §§51, 51.5 and 54, *et seq.*; and California Health & Safety Code
15 §19955, *et seq.*

16 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about
17 March 29, 2007, August 30, 2007, October 18, 2007, April 11, 2008 and May 6, 2008, was an
18 invitee, guest, patron, customer at the defendant's tenants' public accommodation, Good To Go
19 Military, in the City of Cotati, California. At said time and place, defendant failed to provide
20 proper legal access to the Asiana Video; Cavalry Life Center/Administrative Office; Cullinen
21 Hand Therapy; Defenite Impressions; Fairfax French Cleaners; Good To Go Military Surplus;
22 Montana Hawk Shooting Range; Paragon Screen Printing; Scott, McDougall & Associates; Spa
23 Land; and Studio FX, each of which is a "public accommodation" and/or a "public facility"
24 including, but not limited to signage, parking and ramps/curb cuts. The denial of access was in
25 violation of both federal and California legal requirements, and plaintiff CRAIG YATES
26 suffered violation of his civil rights to full and equal access, and was embarrassed and
27 humiliated.

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1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel
6 California law, whose goals are closely tied with the ADA, including but not limited to violations
7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
8 *seq.*, including §19959; Title 24 California Building Standards Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
10 founded on the facts that the real property which is the subject of this action is located at/near
11 7950 Redwood Drive, in the City of Cotati, County of Sonoma, State of California, and that
12 plaintiffs' causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff CRAIG YATES is a "physically handicapped person", a "physically
15 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically
16 disabled", "physically handicapped" and "person with physical disabilities" are used
17 interchangeably, as these words have similar or identical common usage and legal meaning, but
18 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
19 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other
20 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff
21 CRAIG YATES is a "person with physical disabilities", as defined by all applicable California
22 and United States laws. Plaintiff is a triplegic. Plaintiff CRAIG YATES requires the use of a
23 wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of
24 that portion of the public whose rights are protected by the provisions of Health & Safety Code
25 §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped
26 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the
27 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.
28 §12101, *et seq.*

1 6. Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:
2 HELPING YOU HELP OTHERS (“DREES”) is a nonprofit (501(c)(3)) organization that works
3 with persons with disabilities to empower them to be independent in American society. DREES
4 accomplishes its goals and purposes through education on disability issues, enforcement of the
5 rights of persons with disabilities, and the provision of services to persons with disabilities, the
6 general public, public agencies and the private business sector. DREES brings this action on
7 behalf of its members, many of whom are persons with physical disabilities and whom have
8 standing in their right to bring this action.

9 7. That members of DREES, like plaintiff CRAIG YATES, will or have been guests
10 and invitees at the subject Good To Go Military Surplus and GRAVENSTEIN BUSINESS
11 CENTER for which it is a part, and that the interests of plaintiff DREES in removing
12 architectural barriers at the subject GRAVENSTEIN BUSINESS CENTER advance the purposes
13 of DREES to assure that all public accommodations, including the subject Good To Go Military
14 Surplus, are accessible to independent use by mobility-impaired persons. The relief sought by
15 plaintiff DREES as alleged herein is purely statutory in nature.

16 8. Defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN BUSINESS
17 CENTER (hereinafter alternatively collectively referred to as “defendant”) is the owner and
18 operator, lessor and/or lessee, or agent of the owners, lessors and/or lessees, of the public
19 accommodation known as GRAVENSTEIN BUSINESS CENTER, located at/near 7950
20 Redwood Drive, Cotati, California, or of the building and/or buildings which constitute said
21 public accommodation.

22 9. At all times relevant to this complaint, defendant FRANKLIN ARDEN LLC, dba
23 GRAVENSTEIN BUSINESS CENTER, owns and operates in joint venture the subject
24 GRAVENSTEIN BUSINESS CENTER as a public accommodation. This business is open to the
25 general public and conducts business therein. Each business within the center is a “public
26 accommodation” or “public facility” subject to the requirements of California Civil Code §§51,
27 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et*
28 *seq.*

1 10. At all times relevant to this complaint, defendant FRANKLIN ARDEN LLC, dba
 2 GRAVENSTEIN BUSINESS CENTER is jointly and severally responsible to identify and
 3 remove architectural barriers at the subject GRAVENSTEIN BUSINESS CENTER pursuant to
 4 Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

5 **§ 36.201 General**

6 (b) *Landlord and tenant responsibilities.* Both the landlord
 7 who owns the building that houses a place of public
 8 accommodation and the tenant who owns or operates the place of
 9 public accommodation are public accommodations subject to the
 requirements of this part. As between the parties, allocation of
 responsibility for complying with the obligations of this part may
 be determined by lease or other contract.

10 28 CFR §36.201(b)

11 **PRELIMINARY FACTUAL ALLEGATIONS:**

12 11. The GRAVENSTEIN BUSINESS CENTER, is a commercial center consisting of
 13 the following places of public accommodation: Asiana Video; Cavalry Life
 14 Center/Administrative Office; Cullinen Hand Therapy; Defenite Impressions; Fairfax French
 15 Cleaners; Good To Go Military Surplus; Montana Hawk Shooting Range; Paragon Screen
 16 Printing; Scott, McDougall & Associates; Spa Land; and Studio FX , located at/near 7950
 17 Redwood Drive #2, Cotati, California. The GRAVENSTEIN BUSINESS CENTER, its signage,
 18 parking, ramps/curb cuts, and its other facilities are each a “place of public accommodation or
 19 facility” subject to the barrier removal requirements of the Americans with Disabilities Act. On
 20 information and belief, each such facility has, since July 1, 1970, undergone “alterations,
 21 structural repairs and additions”, each of which has subjected the GRAVENSTEIN BUSINESS
 22 CENTER and each of its facilities, its signage, parking, ramps/curb cuts to disability access
 23 requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and
 24 Title 24 of the California Code of regulations (Title 24).

25 12. At all times stated herein, plaintiff CRAIG YATES was a member of DREES.

26 13. At all times referred to herein and continuing to the present time, defendant, and
 27 each of them, advertised, publicized and held out the GRAVENSTEIN BUSINESS CENTER as
 28 being handicapped accessible and handicapped usable.

1 14. On or about March 29, 2007, August 30, 2007, October 18, 2007, April 11, 2008
2 and May 6, 2008, plaintiff CRAIG YATES was an invitee and guest at the subject Good To Go
3 Military Surplus, one of the places of public accommodation within the GRAVENSTEIN
4 BUSINESS CENTER, for purposes of purchasing clothes.

5 15. On or about March 29, 2007, plaintiff CRAIG YATES drove into the parking lot
6 of GRAVENSTEIN BUSINESS CENTER. It was plaintiff CRAIG YATES intention to
7 patronize Good To Go Military Surplus, which he did. Plaintiff CRAIG YATES while parking
8 and wheeling to Good To Go Military Surplus encountered architectural barriers to wit:

9 • lack of van accessible parking; and
10 • ramps that were in the access aisles which were also too steep.

11 16. On or about August 30, 2007, plaintiff CRAIG YATES patronized Good To Go
12 Military Surplus. Plaintiff CRAIG YATES encountered the same parking barriers as previously
13 stated herein.

14 17. On or about September 4, 2007, plaintiff CRAIG YATES wrote both the landlord
15 and tenant of Good To Go Military Surplus about the parking problems and his concerns.
16 Plaintiff suggested that the tenants get together with the landlord and remedy the parking
17 problems.

18 18. On or between September 6, 2007 and September 11, 2007, plaintiff CRAIG
19 YATES received a phone message from "Jean" of Good To Go Military Surplus, in substance
20 stating, she received the letter and was looking into the mater.

21 19. On or about September 11, 2007, plaintiff CRAIG YATES wrote "Jean" of Good
22 To Go Military Surplus in response to her message.

23 20. On or about October 18, 2007, plaintiff CRAIG YATES returned to Good To Go
24 Military Surplus in the GRAVENSTEIN BUSINESS CENTER. Plaintiff CRAIG YATES saw
25 that no remedial work had been done to the parking lot. Plaintiff CRAIG YATES encountered
26 all of the same barriers as stated herein. Plaintiff CRAIG YATES mentioned these problems to
27 Jean.

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1 21. Sometime between January and March of 2008, plaintiff CRAIG YATES on a
2 rainy day drove through the parking lot of GRAVENSTEIN BUSINESS CENTER. It appeared
3 that the parking lot had been restriped but the parking space(s) for the disabled and the ramps
4 therein were not "ADAAG" compliant.

5 22. On or about April 11, 2008, plaintiff CRAIG YATES once again patronized Good
6 To Go Military Surplus at the GRAVENSTEIN BUSINESS CENTER. Plaintiff CRAIG
7 YATES encountered all the same barriers as stated herein. No remedial work had been done to
8 any aspect of the parking lot.

9 23. On or about May 6, 2008, plaintiff CRAIG YATES wrote "Jean" at Good To Go
10 Military Surplus relative to the parking lot not being repaired and the appearance of the new
11 striping. Plaintiff CRAIG YATES mailed the letter. Thereafter, plaintiff CRAIG YATES was in
12 the vicinity of the GRAVENSTEIN BUSINESS CENTER.

13 24. At said time and place, plaintiff CRAIG YATES drove to Good To Go Military
14 Surplus. Plaintiff CRAIG YATES could see that no remedial work had been done in the parking
15 lot. Plaintiff CRAIG YATES parked in a non complying parking space marked as "accessible."
16 Plaintiff CRAIG YATES shopped at Good To Go Military Surplus.

17 25. On or about noon, May 7, 2008, plaintiff CRAIG YATES received a telephone
18 message from "Jean" of Good To Go Military Surplus. The message in substance was, "She
19 received the letter of May 6, 2008, and she knows the issues are ramping and parking. That she
20 only leases and this is not her responsibility. She gave the letter to the landlord. The landlord
21 had someone check out the parking lot, and it complies with all codes. She asked that he,
22 (plaintiff CRAIG YATES) not contact her any longer and to take her out of the loop."

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1 26. Therefore, at said time(s) and place, plaintiff CRAIG YATES, a person with a
2 disability, encountered the following inaccessible elements of the subject GRAVENSTEIN
3 BUSINESS CENTER which constituted architectural barriers and a denial of the proper and
4 legally-required access to a public accommodation to persons with physical disabilities including,
5 but not limited to:

- 6 a. lack of directional signage to show accessible routes of travel, i.e.
7 entrances;
- 8 b. lack of disabled van accessible parking stall(s);
- 9 c. lack of the requisite type and number of disabled parking stall(s)
- 10 d. lack of an accessible entrance/curb cuts from access aisles onto the
11 sidewalk of GRAVENSTEIN BUSINESS CENTER; and
- 12 e. On personal knowledge, information and belief, other public facilities and
13 elements too numerous to list were improperly inaccessible for use by
14 persons with physical disabilities.

15 27. At all times stated herein, the existence of architectural barriers at defendants'
16 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
17 with the Americans with Disabilities Act of 1990 either then, now or in the future.

18 28. On or about September 4, 2007, September 11, 2007 and May 6, 2008,
19 defendant(s) were sent four (4) letters by or on behalf of plaintiff CRAIG YATES advising of the
20 existence of architectural barriers, requesting a response within 14 days and requesting remedial
21 measures be undertaken within 90 days or an explanation of why the time limit set could not be
22 met and/or extenuating circumstances. Plaintiff CRAIG YATES received a phone call from
23 "Jean" of Good To Go Military Surplus but nothing came of the call. Said letters are attached
24 hereto collectively as exhibit "A" and incorporated by reference as though fully set forth herein.

25 29. At all times stated herein, defendants, and each of them, did not act as reasonable
26 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
27 removing architectural barriers that would foreseeably prevent plaintiff CRAIG YATES from
28 receiving the same goods and services as able bodied people and some of which may and did pose
a threat of harm and/or personal injury to people with disabilities.

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1 30. As a legal result of defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
2 BUSINESS CENTER 's failure to act as a reasonable and prudent public accommodation in
3 identifying, removing or creating architectural barriers, policies, practices and procedures that
4 denied access to plaintiffs and other persons with disabilities, plaintiffs suffered the damages as
5 alleged herein.

6 31. As a further legal result of the actions and failure to act of defendants, and as a
7 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
8 herein, plaintiffs were denied their civil rights to full and equal access to public facilities. Plaintiff
9 CRAIG YATES suffered a loss of his civil rights and his rights as a person with physical
10 disabilities to full and equal access to public facilities.

11 32. Further, plaintiff CRAIG YATES suffered emotional distress, mental
12 distress, mental suffering, mental anguish, which includes, but is not limited to, shame,
13 humiliation, embarrassment, anger, disappointment and worry, expectedly and naturally
14 associated with a person with physical disabilities being denied access, all to his damages as
15 prayed hereinafter in an amount within the jurisdiction of this court. No claim is being made for
16 mental and emotional distress over and above that usually associated with the discrimination and
17 physical injuries claimed, and no expert testimony regarding this usual mental and emotional
18 distress will be presented at trial in support of the claim for damages.

19 33. Defendants', and each of their, failure to remove the architectural barriers
20 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to said public
21 accommodation, and continues to create continuous and repeated exposure to substantially the
22 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.

23 34. Plaintiff CRAIG YATES and the membership of DREES were denied their rights
24 to equal access to a public facility by defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
25 BUSINESS CENTER , because defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
26 BUSINESS CENTER maintained a business center without access for persons with physical
27 disabilities to its facilities, including but not limited to the signage, parking, ramps/curb cuts , and
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1 other public areas as stated herein, and continue to the date of filing this complaint to deny equal
2 access to plaintiffs and other persons with physical disabilities in these and other ways.

3 35. On information and belief, construction alterations carried out by defendants have
4 also triggered access requirements under both California law and the Americans with Disabilities
5 Act of 1990.

6 36. Plaintiffs, as described hereinbelow, seek injunctive relief to require the
7 GRAVENSTEIN BUSINESS CENTER to be made accessible to meet the requirements of both
8 California law and the Americans with Disabilities Act of 1990, whichever is more restrictive, so
9 long as defendants operate the business center as a public facility.

10 37. Plaintiffs seek damages for violation of their civil rights on March 29, 2007,
11 August 30, 2007, October 18, 2007, April 11, 2008 and May 6, 2008 and the one (1) day that
12 plaintiff CRAIG YATES drove through the parking lot only to view it, and they seek statutory
13 damages of not less than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to
14 Civil Code §54.3, for each day after his visit that the trier of fact (court/jury) determines was the
15 date that some or all remedial work should have been completed under the standard that the
16 landlord and tenant had an ongoing duty to identify and remove architectural barriers where it was
17 readily achievable to do so, which deterred plaintiff CRAIG YATES from returning to the subject
18 public accommodation because of his knowledge and/or belief that neither some or all
19 architectural barriers had been removed and that said premises remains inaccessible to persons
20 with disabilities whether a wheelchair user or otherwise.

21 38. On information and belief, defendants have been negligent in their affirmative duty
22 to identify the architectural barriers complained of herein and negligent in the removal of some or
23 all of said barriers.

24 39. Because of defendants' violations, plaintiffs and other persons with physical
25 disabilities are unable to use public facilities such as those owned and operated by defendants on a
26 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
27 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and
28 other accessibility law as plead herein. Plaintiffs seek an order from this court compelling

1 defendants to make the GRAVENSTEIN BUSINESS CENTER accessible to persons with
2 disabilities.

3 40. On information and belief, defendants have intentionally undertaken to modify and
4 alter existing building(s), and have failed to make them comply with accessibility requirements
5 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each
6 of them, in failing to provide the required accessible public facilities at the time of plaintiff's visit
7 and injuries, indicate actual and implied malice toward plaintiffs, and despicable conduct carried
8 out by defendant, and each of them, with a willful and conscious disregard for the rights and
9 safety of plaintiffs and other similarly situated persons, and justify a trebling of damages as
10 provided by Civil Code §§52(a) and 54.3, in order to make a more profound example of
11 defendants, and each of them, to other operators of other business centers and other public
12 facilities, and to punish defendants and to carry out the purposes of the Civil Code §§ 51, 51.5
13 and 54.

14 41. Plaintiffs are informed and believe and therefore allege that defendant FRANKLIN
15 ARDEN LLC, dba GRAVENSTEIN BUSINESS CENTER, and each of them, caused the subject
16 building(s) which constitute the GRAVENSTEIN BUSINESS CENTER to be constructed,
17 altered and maintained in such a manner that persons with physical disabilities were denied full
18 and equal access to, within and throughout said building(s) of the GRAVENSTEIN BUSINESS
19 CENTER and were denied full and equal use of said public facilities. Furthermore, on
20 information and belief, defendant has continued to maintain and operate said center and/or its
21 building(s) in such conditions up to the present time, despite actual and constructive notice to
22 such defendant that the configuration of the center and/or its building(s) is in violation of the civil
23 rights of persons with physical disabilities, such as plaintiff CRAIG YATES, the membership of
24 plaintiff DREES and the disability community which DREES serves. Such construction,
25 modification, ownership, operation, maintenance and practices of such public facilities are in
26 violation of Civil Code §§51, 51.5 and 54, Health and Safety Code §19955, and the ADA, 42
27 U.S.C. §12101, *et seq.*

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1 42. On personal knowledge, information and belief, the basis of defendants' actual and
2 constructive notice that the physical configuration of the facilities including, but not limited to,
3 architectural barriers constituting the GRAVENSTEIN BUSINESS CENTER and/or building(s)
4 was in violation of the civil rights of persons with physical disabilities, such as plaintiffs,
5 includes, but is not limited to, communications with invitees and guests, plaintiff CRAIG YATES
6 himself, sponsors of conferences, owners of other restaurants, hotels, motels and businesses,
7 notices they obtained from governmental agencies upon modification, improvement, or substantial
8 repair of the subject premises and other properties owned by these defendants, newspaper articles
9 and trade publications regarding the Americans with Disabilities Act of 1990 and other access
10 laws, public service announcements by former U.S. Attorney General Janet Reno between 1993
11 and 2000, and other similar information. Defendants' failure, under state and federal law, to make
12 the center accessible is further evidence of defendants' conscious disregard for the rights of
13 plaintiff and other similarly situated persons with disabilities. Despite being informed of such
14 effect on plaintiff and other persons with physical disabilities due to the lack of accessible
15 facilities, defendant, and each of them, knowingly and willfully refused to take any steps to rectify
16 the situation and to provide full and equal access for plaintiffs and other persons with physical
17 disabilities to the center. Said defendant, and each of them, have continued such practices, in
18 conscious disregard for the rights of plaintiffs and other persons with physical disabilities, up to
19 the date of filing of this complaint, and continuing thereon. The defendant had further actual
20 knowledge of the architectural barriers referred to herein by virtue of the demand letter addressed
21 to the defendants' and served concurrently with the summons and complaint. Said conduct, with
22 knowledge of the effect it was and is having on plaintiffs and other persons with physical
23 disabilities, constitutes despicable conduct in conscious disregard of the rights and safety of
24 plaintiffs and of other similarly situated persons, justifying the imposition of treble damages per
25 Civil Code §§52 and 54.3.

26 43. Plaintiff CRAIG YATES and plaintiff DREES, on behalf of its membership and
27 the disability community which it serves, consisting of persons with disabilities, would, could and
28

1 will return to the subject public accommodation when it is made accessible to persons with
 2 disabilities.

3 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC
 4 ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
 5 DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

6 (On behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,
 7 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
 8 corporation and Against Defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
 9 BUSINESS CENTER , inclusive)
 (42 U.S.C. §12101, *et seq.*)

10 44. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
 11 allegations contained in paragraphs 1 through 43 of this complaint.

12 45. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
 13 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
 14 protect:

15 some 43 million Americans with one or more physical or mental
 16 disabilities; [that] historically society has tended to isolate and
 17 segregate individuals with disabilities; [that] such forms of
 18 discrimination against individuals with disabilities continue to be a
 serious and pervasive social problem; [that] the nation's proper
 goals regarding individuals with disabilities are to assure equality of
 opportunity, full participation, independent living and economic
 self-sufficiency for such individuals; [and that] the continuing
 existence of unfair and unnecessary discrimination and prejudice
 denies people with disabilities the opportunity to compete on an
 equal basis and to pursue those opportunities for which our free
 society is justifiably famous.

19 46. Congress stated as its purpose in passing the Americans with Disabilities Act of
 20 1990 (42 U.S.C. §12102):

21 It is the purpose of this act (1) to provide a clear and comprehensive
 22 national mandate for the elimination of discrimination against
 23 individuals with disabilities; (2) to provide clear, strong, consistent,
 24 enforceable standards addressing discrimination against individuals
 25 with disabilities; (3) to ensure that the Federal government plays a
 26 central role in enforcing the standards established in this act on
 behalf of individuals with disabilities; and (4) to invoke the sweep
 of Congressional authority, including the power to enforce the 14th
 Amendment and to regulate commerce, in order to address the
 major areas of discrimination faced day to day by people with
 disabilities.

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1 47. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
 2 (hereinafter the “ADA”), Congress passed “Title III - Public Accommodations and Services
 3 Operated by Private Entities” (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
 4 accommodations identified for purposes of this title was:

5 (7) PUBLIC ACCOMMODATION - The following private
 6 entities are considered public accommodations for purposes of this
 title, if the operations of such entities affect commerce -

7 (E) a bakery, grocery store, clothing store, hardware store, shopping center, or
 8 other sales or rental establishment;

9 (F) a laundromat, dry-cleaner, bank, barber shop, beauty parlor, travel service, shoe
 10 repair service, funeral parlor, gas station, office of an accountant or lawyer,
 pharmacy, insurance office, professional office of a health care provider, hospital
 or other service establishment; and

11 (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise
 12 or recreation.

13 42 U.S.C. §12181(7)(E)(F) and (L)

14 48. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated against
 15 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
 16 privileges, advantages, or accommodations of any place of public accommodation by any person
 17 who owns, leases, or leases to, or operates a place of public accommodation”.

18 49. The specific prohibitions against discrimination set forth in §302(b)(2)(a),

19 42 U.S.C. §12182(b)(2)(a) are:

20 (I) the imposition or application of eligibility criteria
 21 that screen out or tend to screen out an individual with a disability
 22 or any class of individuals with disabilities from fully and equally
 23 enjoying any goods, services, facilities, privileges, advantages, or
 accommodations, unless such criteria can be shown to be necessary
 for the provision of the goods, services, facilities, privileges,
 advantages, or accommodations being offered;

24 (ii) a failure to make reasonable modifications in
 25 policies, practices, or procedures, when such modifications are
 26 necessary to afford such goods, services, facilities, privileges,
 27 advantages or accommodations to individuals with disabilities,
 unless the entity can demonstrate that making such modifications
 would fundamentally alter the nature of such goods, services,
 facilities, privileges, advantages, or accommodations;

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(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective January 31, 1993, the standards of the ADA were also incorporated into California Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

50. The removal of the barriers complained of by plaintiffs as hereinabove alleged was at all times after January 26, 1992 "readily achievable" as to the subject building(s) of GRAVENSTEIN BUSINESS CENTER pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i)and (ii).

51. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily accomplishable and able to be carried out without much difficulty or expense.” The statute defines relative “expense” in part in relation to the total financial resources of the entities involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that plaintiffs complain of herein were and are “readily achievable” by the defendants under the standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was

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1 not "readily achievable" for defendants to remove each of such barriers, defendants have failed to
 2 make the required services available through alternative methods which were readily achievable.

3 52. On information and belief, construction work on, and modifications of, the subject
 4 building(s) of GRAVENSTEIN BUSINESS CENTER occurred after the compliance date for the
 5 Americans with Disabilities Act, January 26, 1992, independently triggering access requirements
 6 under Title III of the ADA.

7 53. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
 8 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
 9 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the
 10 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs
 11 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from
 12 returning to or making use of the public facilities complained of herein so long as the premises
 13 and defendants' policies bar full and equal use by persons with physical disabilities.

14 54. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a
 15 disability to engage in a futile gesture if such person has actual notice that a person or
 16 organization covered by this title does not intend to comply with its provisions". Pursuant to this
 17 section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about
 18 May 6, 2008, but on information and belief, alleges that defendants have continued to violate the
 19 law and deny the rights of plaintiffs and of other persons with physical disabilities to access this
 20 public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of
 21 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
 22 facilities readily accessible to and usable by individuals with disabilities to the extent required by
 23 this title".

24 55. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights
 25 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
 26 the Americans with Disabilities Act of 1990, including but not limited to an order granting
 27 injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being
 28 deemed to be the prevailing party.

1 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

2 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.

3 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT,
4 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
5 corporation, and Against Defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
6 BUSINESS CENTER , inclusive)
7 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

8 56. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the
9 allegations contained in paragraphs 1 through 55 of this complaint.

10 57. At all times relevant to this action, California Civil Code §54 has provided that
11 persons with physical disabilities are not to be discriminated against because of physical handicap
12 or disability. This section provides that:

13 (a) Individuals with disabilities . . . have the same rights as
14 the general public to full and free use of the streets, highways,
15 sidewalks, walkways, public buildings, medical facilities, including
16 hospitals, clinics, and physicians' offices, and other public places.

17 58. California Civil Code §54.1 provides that persons with disabilities shall not be
18 denied full and equal access to places of public accommodation or facilities:

19 (a)(1) Individuals with disabilities shall be entitled to full
20 and equal access, as other members of the general public, to
21 accommodations, advantages, facilities, medical facilities, including
22 hospitals, clinics, and physicians' offices, and privileges of all
23 common carriers, airplanes, motor vehicles, railroad trains,
24 motorbuses, streetcars, boats, or any other public conveyances or
25 modes of transportation (whether private, public, franchised,
26 licensed, contracted, or otherwise provided), telephone facilities,
27 adoption agencies, private schools, hotels, lodging places, places of
28 public accommodation, amusement or resort, and other places to
29 which the general public is invited, subject only to the conditions
30 and limitations established by law, or state or federal regulation, and
31 applicable alike to all persons.

32 Civil Code §54.1(a)(1)

33 59. California Civil Code §54.1 further provides that a violation of the Americans with
34 Disabilities Act of 1990 constitutes a violation of section 54.1:

35 (d) A violation of the right of an individual under the
36 Americans with Disabilities Act of 1990 (Public Law 101-336) also
37 constitutes a violation of this section, and nothing in this section
38 shall be construed to limit the access of any person in violation of
39 that act.

40 Civil Code §54.1(d)

1 60. Plaintiff CRAIG YATES and the membership of plaintiff DREES are persons
 2 within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by
 3 the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific
 4 architectural barrier which defendants knowingly and willfully fail and refuse to remove
 5 constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and
 6 continue to be denied full and equal access to defendants' GRAVENSTEIN BUSINESS
 7 CENTER. As a legal result, plaintiffs are entitled to seek damages pursuant to a court or jury
 8 determination, in accordance with California Civil Code §54.3(a) for each day on which they
 9 visited or have been deterred from visiting the GRAVENSTEIN BUSINESS CENTER because of
 10 their knowledge and belief that the GRAVENSTEIN BUSINESS CENTER is inaccessible to
 11 persons with disabilities. California Civil Code §54.3(a) provides:

12 Any person or persons, firm or corporation, who denies or interferes
 13 with admittance to or enjoyment of the public facilities as specified
 14 in Sections 54 and 54.1 or otherwise interferes with the rights of an
 15 individual with a disability under Sections 54, 54.1 and 54.2 is
 16 liable for each offense for the actual damages and any amount as
 17 may be determined by a jury, or the court sitting without a jury, up
 18 to a maximum of three times the amount of actual damages but in
 19 no case less than . . . one thousand dollars (\$1,000) and . . .
 20 attorney's fees as may be determined by the court in addition
 21 thereto, suffered by any person denied any of the rights provided in
 22 Sections 54, 54.1 and 54.2.

23 Civil Code §54.3(a)

24 61. On or about March 29, 2007, August 30, 2007, October 18, 2007, April 11, 2008
 25 and May 6, 2008, and the one (1) day wherein plaintiff CRAIG YATES drove through the non
 26 complying parking lot, plaintiff CRAIG YATES suffered violations of Civil Code §§54 and 54.1
 27 in that plaintiff CRAIG YATES was denied access to the GRAVENSTEIN BUSINESS CENTER
 28 due to non compliant parking stalls and ramps and other public facilities as stated herein at the
 GRAVENSTEIN BUSINESS CENTER and on the basis that plaintiff CRAIG YATES was a
 person with physical disabilities.

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1 62. As a result of the denial of equal access to defendants' facilities due to the acts and
 2 omissions of defendants, and each of them, in owning, operating and maintaining these subject
 3 public facilities, plaintiffs suffered violations of plaintiffs' civil rights.

4 63. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental
 5 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment
 6 and worry, all of which are expectedly and naturally associated with a denial of access to a person
 7 with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and
 8 omissions to act constituted discrimination against plaintiff on the sole basis that plaintiffs are
 9 persons or an entity that represents persons with physical disabilities and unable, because of the
 10 architectural barriers created and maintained by the defendants in violation of the subject laws, to
 11 use the public facilities hereinabove described on a full and equal basis as other persons.

12 64. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct
 13 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for violation of
 14 plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or
 15 about March 29, 2007, August 30, 2007, October 18, 2007, April 11, 2008 and May 6, 2008, and
 16 the one (1) occasion, when plaintiff CRAIG YATES drove through the parking lot to view it , and
 17 on a continuing basis since then, including statutory damages, a trebling of all of actual damages,
 18 general and special damages available pursuant to §54.3 of the Civil Code according to proof.

19 65. As a result of defendants', and each of their, acts and omissions in this regard,
 20 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
 21 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical
 22 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
 23 the provisions of Civil Code §54.3 and §55, plaintiffs therefore will seek recovery in this lawsuit
 24 for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,
 25 plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also
 26 to compel the defendants to make their facilities accessible to all members of the public with
 27 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to
 28 the provisions of §1021.5 of the Code of Civil Procedure.

1 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

2 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**
FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.
 3 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT,
 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
 4 corporation and Against Defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
 BUSINESS CENTER, inclusive)
 5 (Health & Safety Code §19955, *et seq.*)

6 66. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
 7 allegations contained in paragraphs 1 through 65 of this complaint.

8 67. Health & Safety Code §19955 provides in pertinent part:

9 The purpose of this part is to insure that public accommodations or
 10 facilities constructed in this state with private funds adhere to the
 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5
 11 of Title 1 of the Government Code. For the purposes of this part
 “public accommodation or facilities” means a building, structure,
 12 facility, complex, or improved area which is used by the general
 public and shall include auditoriums, hospitals, theaters, restaurants,
 13 hotels, motels, stadiums, and convention centers. When sanitary
 facilities are made available for the public, clients or employees in
 such accommodations or facilities, they shall be made available for
 14 the handicapped.

15 68. Health & Safety Code §19956, which appears in the same chapter as §19955,
 16 provides in pertinent part, “accommodations constructed in this state shall conform to the
 17 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government
 18 Code” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all
 19 public accommodations constructed or altered after that date. On information and belief, portions
 20 of the GRAVENSTEIN BUSINESS CENTER and/or of the building(s) were constructed and/or
 21 altered after July 1, 1970, and substantial portions of the GRAVENSTEIN BUSINESS CENTER
 22 and/or the building(s) had alterations, structural repairs, and/or additions made to such public
 23 accommodations after July 1, 1970, thereby requiring said center and/or building to be subject to
 24 the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration,
 25 structural repairs or additions per Health & Safety Code §19959.

26 69. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State
 27 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
 28 1982, Title 24 of the California Building Standards Code adopted the California State Architect’s

1 Regulations and these regulations must be complied with as to any alterations and/or
 2 modifications of GRAVENSTEIN BUSINESS CENTER and/or the building(s) occurring after
 3 that date. Construction changes occurring prior to this date but after July 1, 1970 triggered access
 4 requirements pursuant to the "ASA" requirements, the American Standards Association
 5 Specifications, A117.1-1961. On information and belief, at the time of the construction and
 6 modification of said building, all buildings and facilities covered were required to conform to
 7 each of the standards and specifications described in the American Standards Association
 8 Specifications and/or those contained in Title 24 of the California Building Standards Code.

9 70. Business centers such as the GRAVENSTEIN BUSINESS CENTER are "public
 10 accommodations or facilities" within the meaning of Health & Safety Code §19955, *et seq.*

11 71. As a result of the actions and failure to act of defendants, and as a result of the
 12 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
 13 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of plaintiffs'
 14 civil rights and plaintiffs' rights as persons with physical disabilities to full and equal access to
 15 public facilities.

16 72. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
 17 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
 18 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with
 19 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
 20 and to take such action both in plaintiffs' own interests and in order to enforce an important right
 21 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all
 22 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
 23 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953
 24 and Civil Code §§54.3 and 55 and/or in the alternative, plaintiffs will seek attorneys' fees, costs
 25 and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-
 26 3(a)). Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing
 27 party.

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1 73. Plaintiffs seek injunctive relief for an order compelling defendants, and each of
 2 them, to make the subject place of public accommodation readily accessible to and usable by
 3 persons with disabilities.

4 Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

5 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND
 6 EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES
 7 AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET
 8 SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

9 (On Behalf of Plaintiffs FRANKLIN ARDEN LLC, dba GRAVENSTEIN BUSINESS
 10 CENTER and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:
 11 HELPING YOU HELP OTHERS, a California public benefit corporation, and Against
 12 Defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN BUSINESS CENTER,
 13 inclusive)

14 (Civil Code §51, 51.5)

15 74. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
 16 allegations contained in paragraphs 1 through 73 of this complaint.

17 75. Defendants' actions and omissions and failure to act as a reasonable and prudent
 18 public accommodation in identifying, removing and/or creating architectural barriers, policies,
 19 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
 20 Unruh Act provides:

21 This section shall be known, and may be cited, as the Unruh
 22 Civil Rights Act.

23 All persons within the jurisdiction of this state are free and
 24 equal, and no matter what their sex, race, color, religion, ancestry,
 25 national origin, or **disability** are entitled to the full and equal
 26 accommodations, advantages, facilities, privileges, or services in all
 27 business establishments of every kind whatsoever.

28 This section shall not be construed to confer any right or
 29 privilege on a person that is conditioned or limited by law or that is
 30 applicable alike to persons of every sex, color, race, religion,
 31 ancestry, national origin, or **disability**.

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1 Nothing in this section shall be construed to require any construction,
 2 alteration, repair, structural or otherwise, or modification of any sort whatsoever,
 3 beyond that construction, alteration, repair, or modification that is otherwise
 4 required by other provisions of law, to any new or existing establishment, facility,
 5 building, improvement, or any other structure . . . nor shall anything in this section
 6 be construed to augment, restrict, or alter in any way the authority of the State
 7 Architect to require construction, alteration, repair, or modifications that the State
 8 Architect otherwise possesses pursuant to other . . . laws.

9
 10 A violation of the right of any individual under the Americans with
 11 Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of
 12 this section.

13 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 14 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the
 15 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
 16 failing to act to identify and remove barriers can be construed as a “negligent per se” act of
 17 defendants, and each of them.

18 76. The acts and omissions of defendants stated herein are discriminatory in nature and
 19 in violation of Civil Code §51.5:

20 No business establishment of any kind whatsoever shall
 21 discriminate against, boycott or blacklist, refuse to buy from, sell to,
 22 or trade with any person in this state because of the race, creed,
 23 religion, color, national origin, sex, or **disability** of the person or of
 24 the person’s partners, members, stockholders, directors, officers,
 25 managers, superintendents, agents, employees, business associates,
 26 suppliers, or customers.

27 As used in this section, “person” includes any person, firm
 28 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

29 Nothing in this section shall be construed to require any
 30 construction, alteration, repair, structural or otherwise, or
 31 modification of any sort whatsoever, beyond that construction,
 32 alteration, repair or modification that is otherwise required by other
 33 provisions of law, to any new or existing establishment, facility,
 34 building, improvement, or any other structure . . . nor shall anything
 35 in this section be construed to augment, restrict or alter in any way
 36 the authority of the State Architect to require construction,
 37 alteration, repair, or modifications that the State Architect otherwise
 38 possesses pursuant to other laws.

39 77. Defendants’ acts and omissions as specified have denied to plaintiffs full and equal
 40 accommodations, advantages, facilities, privileges and services in a business establishment, on the
 41 basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act.
 42 Furthermore, pursuant to the 1992 amendment to California Civil Code §51, “A violation of the

1 right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336)
 2 shall also constitute a violation of this section". Plaintiffs accordingly incorporate the entirety of
 3 their above cause of action for violation of the Americans with Disabilities Act at §44, *et seq.*, as
 4 if replied herein.

5 78. As a legal result of the violation of plaintiff CRAIG YATES's civil rights as
 6 hereinabove described, plaintiff CRAIG YATES has suffered general and statutory damages on or
 7 about March 29, 2007, August 30, 2007, October 18, 2007, April 11, 2008 and May 6, 2008, and
 8 on one (1) occasion during the early winter months of 2008 when plaintiff CRAIG YATES drove
 9 through the parking lot.

10 79. Further, plaintiff CRAIG YATES suffered, emotional distress (all to plaintiff's
 11 damage according to proof, and incurred reasonable attorneys' fees and costs). Plaintiffs CRAIG
 12 YATES and DREES are entitled to the rights and remedies of §52(a) of the Civil Code, including
 13 trebling of actual damages (defined by §52(h) of the Civil Code to mean "special and general
 14 damages"), as well as to reasonable attorneys' fees and costs, as is allowed by statute, according to
 15 proof if deemed to be the prevailing party.

16 **PRAYER:**

17 Plaintiffs pray that this court award damages and provide relief as follows:

18 I. **PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)
 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,
 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
 corporation, and Against Defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
 BUSINESS CENTER , inclusive)
 (42 U.S.C. §12101, *et seq.*)

22 1. For injunctive relief, compelling defendant FRANKLIN ARDEN LLC, dba
 23 GRAVENSTEIN BUSINESS CENTER, inclusive, to make the GRAVENSTEIN BUSINESS
 24 CENTER, located at 7950 Redwood Drive #2, Cotati, California, readily accessible to and usable
 25 by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable
 26 modifications in policies, practice, eligibility criteria and procedures so as to afford full access to
 27 the goods, services, facilities, privileges, advantages and accommodations being offered.
 28

1 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed
 2 the prevailing party; and

3 3. For such other and further relief as the court may deem proper.

4 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND
 EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1
 AND 54.3, ET SEO.**

5 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,
 6 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
 7 corporation, and Against Defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
 BUSINESS CENTER, inclusive)

8 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

9 1. For injunctive relief, compelling defendant FRANKLIN ARDEN LLC, dba
 GRAVENSTEIN BUSINESS CENTER, inclusive, to make the GRAVENSTEIN BUSINESS
 10 CENTER, located at 7950 Redwood Drive #2, Cotati, California, readily accessible to and usable
 11 by individuals with disabilities, per state law.

12 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for
 13 each occasion on which plaintiffs were deterred from returning to the subject public
 14 accommodation.

15 3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil Procedure
 16 §1021.5, if plaintiffs are deemed the prevailing party;

17 4. Treble damages pursuant to Civil Code §54.3;

18 5. For all costs of suit;

19 6. Prejudgment interest pursuant to Civil Code §3291;

20 7. Such other and further relief as the court may deem just and proper.

21 **III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND
 EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1
 AND 54.3, ET SEO.**

22 (On Behalf of Plaintiff CRAIG YATES, and Against Defendant FRANKLIN ARDEN
 23 LLC, dba GRAVENSTEIN BUSINESS CENTER , inclusive),
 24 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

25 1. General and compensatory damages according to proof.

26 ///

27 ///

28 ///

1 **IV. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
2 SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
3 §19955, ET. SEQ.**

4 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,
5 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
6 corporation, and Against Defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
7 BUSINESS CENTER, inclusive)

8 (Health & Safety code §19955, *et seq.*)

9 1. For injunctive relief, compelling defendant FRANKLIN ARDEN LLC, dba
10 GRAVENSTEIN BUSINESS CENTER, inclusive, to make the GRAVENSTEIN BUSINESS
11 CENTER, located at 7950 Redwood Drive #2, Cotati, California, readily accessible to and usable
12 by individuals with disabilities, per state law.

13 2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, Civil Code §55,
14 and/or, alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

15 3. For all costs of suit;

16 4. For prejudgment interest pursuant to Civil Code §3291;

17 5. Such other and further relief as the court may deem just and proper.

18 **V. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
19 FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
20 PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
21 CODE §51, ET SEO. (THE UNRUH CIVIL RIGHTS ACT)**

22 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,
23 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
24 corporation and Against Defendant FRANKLIN ARDEN LLC, dba GRAVENSTEIN
25 BUSINESS CENTER , inclusive)

26 (California Civil Code §§51, 51.5, *et seq.*)

27 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and
28 for each occasion on which plaintiffs were deterred from returning to the subject public
accommodation;

29 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the
30 prevailing party;

31 3. Treble damages pursuant to Civil Code §52(a);

32 4. For all costs of suit;

33 5. Prejudgment interest pursuant to Civil Code §3291; and

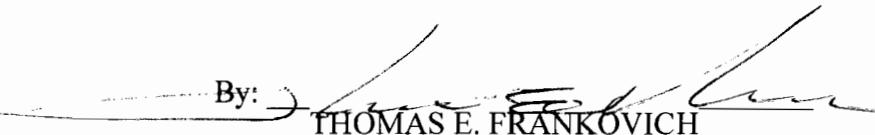
34 6. Such other and further relief as the court may deem just and proper.

1 **VI. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**
2 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**
3 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**
4 **CODE §§51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

5 (On Behalf of Plaintiff CRAIG YATES, and Against Defendant FRANKLIN ARDEN
6 LLC, dba GRAVENSTEIN BUSINESS CENTER , inclusive)
7 (California Civil Code §§51, 51.5, *et seq.*)

8 1. General and compensatory damages to plaintiff CRAIG YATES according to
9 proof.

10 Dated: 5/20/08, 2008 THOMAS E. FRANKOVICH
11 *A PROFESSIONAL LAW CORPORATION*

12 By: 
13 THOMAS E. FRANKOVICH
14 Attorneys for Plaintiffs CRAIG YATES and
15 DISABILITY RIGHTS ENFORCEMENT, EDUCATION,
16 SERVICES:HELPING YOU HELP OTHERS, a California
17 public benefit corporation

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

20 Dated: 5/20/08, 2008 THOMAS E. FRANKOVICH
21 *A PROFESSIONAL LAW CORPORATION*

22 By: 
23 THOMAS E. FRANKOVICH
24 Attorneys for Plaintiffs CRAIG YATES and
25 DISABILITY RIGHTS, ENFORCEMENT, EDUCATION,
26 SERVICES:HELPING YOU HELP OTHERS, a California
27 public benefit corporation

Craig Yates

1004 Los Gamos Road, Unit 3

San Rafael, CA 94903

September 4, 2007

Manager

Go To Military Supply

7950 Redwood Drive #2

Cotati, CA 94931

Dear Manager of Go To Military Supply:

Recently, I visited Go To Military Supply. As I use a wheelchair, I had problems with the parking and ramps. They need to be fixed. As a tenant you should get together with Gravenstein Business Center and the other tenants and make accessible parking, curb cuts, or good ramps.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to The Center once it's accessible to me. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. <http://www.usdoj.gov/crt/ada/adahom1.htm>. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your account already has this information or knows about it.

Thank you for considering my request.

Thank You,

Craig Yates

Craig Yates

1004 Los Gamos Road, Unit 3

San Rafael, CA 94903

September 4, 2007

Owner of Building

Go To Military Supply

7950 Redwood Drive #2

Cotati, CA 94931

Dear Owner of Building for Go To Military Supply:

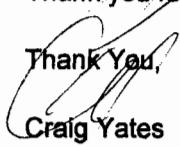
Recently, I visited Go To Military Supply. As I use a wheelchair, I had problems with the parking and ramps. They need to be fixed. As a tenant you should get together with Gravenstein Business Center and the other tenants and make accessible parking, curb cuts, or good ramps.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to The Center once it's accessible to me. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

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I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your account already has this information or knows about it.

Thank you for considering my request.


Thank You,

Craig Yates

September 11, 2007

Go To Military Supply
7950 Redwood Dr.
Cotati, Ca. 94931

707-794-9811 store
707-794-9808 fax

Dear Business Operator, Jean

The parking lot has a disabled parking space, but for use and comfort of quality to load and unload, the space isn't according to ADA. The ramp that allows one to go up onto the side walk as well move down to enter ones vehicle isn't correct. This ramp shouldn't be on the marked area with diagonal lines, there should be an opening into the side walk allowing a ramp to enter the sidewalk right or left.

The property owner is responsible for this condition, you and the property owner can If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the 9ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you.

Thank you, appreciate your call regarding these concerns, look forward to the conditions being resolved.


Craig Thomas Yates
1004 Los Gamos Rd. Unit E
San Rafael, Ca. 94903

Craig Yates
1004 Los Gamos Road, Unit 3
San Rafael, CA 94903

May 6, 2008

“Jean”
Go to Military
7950 Redwood Dr.
Cotati, CA 94931

Dear Jean:

Since September 2007, I've been back to the Gravenstein Business Center and Go to Military. I wrote and spoke to you about the parking and ramp problems. I even sent a letter to the owner of the building to your address. I've been back and the building owner hasn't done anything. Why is that?

Anyway, the rainy season came and went and it looked to me that the parking lot was re-striped but that the parking for the disabled and the ramps weren't taken care of. If I'm right, that was the perfect opportunity to do the work. Don't you agree?

Can I assume you sent my letters off to the landlord and that the landlord was aware that when I wrote you in September 2007 that I thought the landlord and tenants should get together and fix it up for everyone's benefit? I still think that was a good idea but it doesn't look like that's gonna happen. What do you think, Jean?

Oh well, I'm disappointed but was curious why it didn't happen while the re-striping went on. Satisfy my curiosity as to why it didn't happen. Hope to hear from you soon.

Thank You,


Craig Yates